

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FINANCE DOCKET NOS. 34986 & 34987

**ASHLAND RAILROAD, INC. &
G. DAVID CRANE
NOTICES OF EXEMPTION**

**REQUEST FOR CONTINUATION OF STAY
BY THE NEW JERSEY DEPARTMENT OF
ENVIRONMENTAL PROTECTION**

The New Jersey Department of Environmental Protection ("NJDEP") provides this supplemental submission under the above referenced docket numbers concerning its review of the information filed with the Surface Transportation Board ("Board") on March 28, 2007 and a letter dated March 28, 2007 to counsel for NJDEP by counsel for Ashland Railroad, Inc ("Ashland") and G. David Crane ("Crane"). These submissions come after the Board's February 26, 2007 decision staying the effectiveness of the Notice of Exemption proceeding and directing Ashland and Crane "to address the matters raised by NJDEP in its petition and provide any other information that may be relevant to determine whether or not [Ashland] will be a rail carrier." Based on Ashland and Crane's submissions, NJDEP continues to believe that the parties have failed to provide sufficient information for the Board to determine whether Ashland is in fact a rail carrier as defined by the Interstate Commerce Commission Termination Act and concerning the type of facility that is proposed and the nature of the proposed operations. For example, Ashland and Crane have provided very little details concerning whether Ashland intends to operate locomotives, own or lease rail cars, provide local or overhead rail operations, establish through rates and divisional arrangements with any other rail carrier or otherwise actually operate

as a railroad common carrier, and concerning whether the proposed facility is a private switch or a line haul rail service. Further, the attached letter to counsel for Ashland and Crane outlines the information that Ashland and Crane still have not provided. NJDEP believes that such information is necessary to determine whether Ashland would indeed be a bona fide "rail carrier" and whether the proposed facility will or may handle solid waste. See April 4, 2007 letter to John K. Fiorilla, Esquire, attached hereto as Exhibit A. Accordingly, NJDEP respectfully requests that the Board continue to stay these proceedings pending, at least, sufficient information from the parties.

Dated. 4/4/07

Respectfully submitted,

Kevin P. Auerbacher *by* *Sec*

Kevin P. Auerbacher

Deputy Attorney General

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of Environmental Protection



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April 4, 2007

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**Re: STB Finance Dockets 34986 and 34987, Ashland Railroad, Inc. and
G. David Crane-Verified Notices of Exemption
Freehold, New Jersey**

Dear Mr. Fiorilla,

We are in receipt of your letter dated March 28, 2007, which responds to my letter dated February 13, 2007, as well as your submission with the Surface Transportation Board dated March 28, 2007. The following responds specifically to your March 28, 2007 letter.

First, we had requested any operating, transportation or other agreements between and/or among Ashland Railroad, Inc. ("Ashland"), G. David Crane ("Crane"), and any "shippers now located or who will locate on 'The Line'." No documents were provided with your letter. Please provide such information or provide an explanation for the failure to provide the requested information. In addition, as you identify Clayton Sand Company ("Clayton") as the primary shipper, please provide any agreements and/or contracts between Ashland and Clayton concerning this site. We also request that you provide any insurance agreements or policies relating to the proposed facility and/or this site.

Second, what role will Clayton have with respect to this site? Please explain Clayton's anticipated obligations and responsibilities for the proposed facility, including Clayton's role in financing and/or funding the proposed facility. Moreover, as we are somewhat familiar with Clayton's typical operations, please indicate whether Clayton handles lumber and salt and if so, at what locations? More specifically, how does Clayton purchase and supply its retail outlets and what commodities does it sell to these outlets? Is there a central distribution facility that Clayton relies



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on? As you have indicated that "there is no particular destination for shipments which has been designated by the shipper," does Clayton plan to utilize destinations other than those he currently utilizes? Since the Clayton companies are well established in New Jersey, some having existed for over fifty years, it is expected that inbound and outbound shipments from Clayton would follow consistent and predictable patterns and thus that the requested information on Clayton and the proposed facility could be supplied. In addition, and in light of this, why haven't shipment destinations been designated or identified?

Third, who is responsible for the costs associated with the proposed facility and what are these anticipated costs? It is not clear from your answer to Question 13 whether or not any shippers will reimburse Ashland or Crane for any costs associated with the proposed facility. Further, you indicate that no shipper will act as an agent for Ashland or Crane. Will an agent be employed and if so, what role will such an agent have at the proposed facility? Fourth, what are the anticipated revenues for the proposed facility and what is the basis for this projection? Please provide any documentation in this regard.

Fifth, do you anticipate that solid (Type 10 or 13 waste as defined by NJDEP regulations) or hazardous waste will be offered as a commodity for shipment? Who would ship waste materials to the facility? If waste is offered, will a building be constructed? Please describe the operations of the facility should waste be offered as a commodity for shipment. Further, what types of containers would be used for the waste? Would these containers be impervious? Are shippers of waste the "other shippers" as referenced that Ashland and Crane "hope to attract" to the facility? What type of solicitation/marketing has there been or will there be for the facility? If no building is to be constructed for the proposed facility, what construction is anticipated?

In addition, Clayton, as we understand, sold the property to Grems-Kirk Railway in August 2006. We understand that Clayton owns a facility in close proximity to the subject property. Please explain the relationship between Clayton's facility and the subject property.

Finally, please explain the discrepancy between your answer that "there are no approvals required from New Jersey agencies for the operations that Ashland intends to operate" and your answer that Ashland will apply for environmental permits if they are required. For what type of facility or operation do you contend such environmental permits would be required?

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Sincerely yours,

STUART RABNER
ATTORNEY GENERAL OF NEW JERSEY

By. Ruth E. Carter
Ruth E. Carter
Deputy Attorney General

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bc Kevin Auerbacher
John Castner

CERTIFICATE OF SERVICE

I certify that I have this day, April 4, 2007, served a copy of the Request for Continuation of the Stay in this proceeding (FD Nos 34986 & 34987) by the New Jersey Department of Environmental Protection upon John K. Fiorilla, Esq., attorney for applicant, Ashland Railroad, Inc , via electronic mail at jfiorilla@capehart.com


Ruth E. Carter